

REMARKS

The Examiner required an Election of Species of one of the following inventions:

Species I (Figure 1); and

Species II (Figure 2).

In response to the Examiner's Election of Species Requirement, Applicant provisionally elects, with traverse, to prosecute Species I, for which at least claims 1-3 and 5-8 are readable on. Further, at least, claim 1 is generic; and if 1 is allowed, it is respectfully requested to rejoin the non-elected claim. Applicant further reserves the right to file a divisional application directed to the non-elected invention. The Election of Species Requirement is respectfully traversed.

Specifically, as set forth in MPEP § 806.04 (F), claims to be restricted to different species must be mutually exclusive. The general test as to when claims are restricted to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations that disclose only for the second species and not the first. In this case, all features found in claim 1 is directed to both species I and II, and thus, cannot be mutually exclusive. Further, it is submitted that Figures 1 and 2 are merely alternative embodiments that read on claim 1.

Even assuming that the Examiner's position is correct (in which Applicant does not agree), 37 C.F.R. §1.146 states that a reasonable number of species are permitted in a single application. The examination of all the species together in one application will not place an undue burden on the Examiner. It is respectfully submitted that the Examiner's Election of Species Requirement is improper in view of the fact that a reasonable number of species are set forth in the present application, and respectfully requested to reconsider the Election of Species Requirement and act on all of the claims.

Further, it is also respectfully submitted that the subject matter of all claims is sufficiently related that a thorough search for the subject matter of any one species would encompass a search for the subject matter of the remaining claims. Thus, it is respectfully submitted that the search and examination of the entire application could be performed without serious burden.

MPEP § 803 states:

[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine on the merits, even though it includes claims to distinct or independent invention.
(emphasis added)

Thus, it is respectfully submitted that this policy should apply in the present application in order to avoid unnecessary delay and expense to Applicant and duplicated examination by the Patent Office.

For all of the above stated reasons, reconsideration and withdrawal of the outstanding Election of Species Requirement and favorable allowance of all claims in the instant application are earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY & PIERCE, PLC

By:

John A. Castellano, Reg. No. 35,094
P.O. Box 8910
Reston, VA 20195
(703) 668-8000

JAC/DJC/lmg